

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

and

STATE OF NEW JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

FRANCE SHIPMANAGEMENT S.A.

Defendant.

Civil Action No.

CONSENT DECREE

I. Background

A. The United States of America ("United States"), by the Attorney General, on behalf of the United States Department of the Interior ("DOI") and the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), and the State of New Jersey, on behalf of the Department of Environmental Protection ("State"), have filed a complaint against France Shipmanagement S.A. ("Settling Defendant") in this Court alleging that the Settling Defendant is liable to the United States and the State under Section 1002(a) and (b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702 (a) and (b), for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing the damages, resulting from an oil spill that occurred in Big Stone Anchorage, Delaware Bay, on May 10, 1996.

The complaint alleges that the spill occurred when the tank vessel Anitra, which was operated by Settling Defendant, was in the process of lightering oil (the “Anitra Oil Spill”). The complaint further alleges that tens of thousands of gallons of oil were spilled as a result of the incident, that the spill caused injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State, and that the United States and the State have incurred costs in assessing the nature and extent of these injuries.

B. The United States and the State share trusteeship of the injured resources and are coordinating restoration efforts.

C. The Parties agree and the Court finds that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

D. The Parties agree and this Court, by entering this Decree, finds that this Consent Decree has been negotiated by the parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

E. The Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

II. Jurisdiction

1. The Parties agree and this Court concludes that it has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and also pursuant to 28 U.S.C. §§ 1331 and 1345. Venue is proper in this District pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. 1391(b). This Court has, and the Settling Defendant consents to, the Court's personal jurisdiction over them in connection with this action. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

III. Parties Bound

2. This Consent Decree applies to and is binding: upon the State, on behalf of the New Jersey Department of Environmental Protection, as the designated State trustee for natural resources, including natural resources at, in the vicinity of, or affected by the Anitra Oil Spill; upon the United States, on behalf of the DOI and NOAA, as the designated federal trustees for natural resources, including those at, in the vicinity of, or affected by the Anitra Oil Spill; and upon the Settling Defendant including, without limitation, its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal

property, shall in no way alter such Settling Defendant's or its successors' and assigns' rights or responsibilities under this Consent Decree.

IV. Definitions

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R. Part 990, shall have the meaning assigned to them in OPA or in such regulations. Whenever the following terms are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

“Anitra Oil Spill” means the oil spill that occurred on May 10, 1996, during the lightering of oil from the tank vessel Anitra while anchored in Big Stone Anchorage, Delaware Bay, New Jersey.

“Anitra Oil Spill Restoration Account” means a separate project numbered account, Project No. 0350, established within DOI's Natural Resource Damage Assessment and Restoration Fund, which will be funded by the Settling Defendant in accordance with Section VI (Payments to Trustees) of this Consent Decree and used by the Trustees in accordance with Section VIII (Restoration Plan and Anitra Oil Spill Restoration Account) of this Consent Decree.

“DEP” means the New Jersey Department of Environmental Protection.

“DOI” means the United States Department of the Interior.

“Fund” means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.

“Interest,” as that term is used in Section VI (Payments to Trustees) of this Consent Decree, means interest at the rate provided in 28 U.S.C. § 1961. Interest shall be simple interest calculated on a daily basis.

“Memorandum of Agreement” means the Memorandum of Agreement entered into by the Trustees, as well as any amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

“Natural Resources” shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

“Natural Resource Damages” shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A).

“NOAA” means the National Oceanic and Atmospheric Administration.

“OPA” means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. § 2701-2761.

“Parties” means the Plaintiffs and the Settling Defendant.

“Plaintiffs” means the United States and the State of New Jersey.

“Restoration Plan” means the Draft Natural Resources Restoration Plan: Anitra Oil Spill of May 1996, as well as any amendments or modifications thereof. A copy of the Restoration Plan is attached hereto as Appendix B.

“Settling Defendant” means France Shipmanagement S.A.

“State” shall mean the State of New Jersey.

“Trustees” shall mean the designated federal and state officials who act on behalf of the public as trustees for the natural resources, including those at, in the vicinity of, or affected by the Anitra Oil Spill: the United States Department of the Interior, represented by the United States Fish and Wildlife Service (“USFWS”), and the National Oceanic and Atmospheric Administration are the federal trustees for natural resources herein; the Commissioner of the New Jersey Department of Environmental Protection (“NJDEP”), by N.J.S.A. 13:11K-1 through -19 and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24, and/or the duly delegated Assistant Commissioner, Natural and Historic Resources pursuant to N.J.S.A. 13:1B-4, is the state trustee for natural resources herein.

“United States” shall mean the United States of America, on behalf of the United States Department of the Interior and the United States Department of Commerce, National Oceanic and Atmospheric Administration, including all agencies, bureaus, administrations or departments of DOI and NOAA.

V. Objectives of the Parties

4. The Parties are entering into this Consent Decree to resolve all of the claims of the United States and the State against the Settling Defendant for Natural Resource Damages attributable to the Anitra Oil Spill, including, but not limited to, any injury to,

destruction of, or loss of piping plover or migratory shorebirds, based on the Settling Defendant's agreement to reimburse the Trustees for the reasonable costs of assessing the damages to the Natural Resources resulting from the Anitra Oil Spill, and fund the Restoration Plan to compensate for injury to, loss of, or destruction of Natural Resources resulting from the Anitra Oil Spill.

VI. Payments by Settling Defendant

5. In the manner set forth in this Paragraph 5 and in Paragraph 6, the Settling Defendant shall pay a total of \$1,500,000.00, plus Interest as provided in Paragraph 7, to the Trustees to reimburse costs incurred and to be incurred by the Trustees in assessing the damages to natural resources related to the Anitra Oil Spill, and to plan and implement projects to restore, replace, or acquire the equivalent of natural resources injured in relation to the Anitra Oil Spill.

a. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall pay \$58,528.00, plus Interest as provided in Paragraph 7, to NOAA as reimbursement of costs incurred by NOAA in assessing the Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. Payment shall be made by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, DOJ Case Number 90-5-1-1-4380, and NRDAR Account Number _____. Payment shall be made in accordance with instructions provided, upon request,

to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the persons listed in Section XIII (Notices) for notice to the United States, and to NOAA/NOS/OR&R, ATTN: Kathy Salter, DARRF Manager, 1305 East West Highway, SSMC4, Room 9331, Silver Spring, Maryland 20910-3281. The notice shall state that the payment is for reimbursement of costs of assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill.

b. DOI acknowledges its receipt of payment in the amount of \$46,034.95 from the Settling Defendant in reimbursement of the costs incurred by DOI in assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill.

c. Within thirty (30) days of the effective date of this Consent Decree, the Settling Defendant shall pay \$133,238.00, plus Interest as provided in Paragraph 7, to the NJDEP in reimbursement of the costs incurred by the State in assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. Payment shall be made by cashier's check or certified check referencing the "Antira Oil Spill" and payable to "Treasurer, State of New Jersey." The check shall be mailed, with notice referring to this action, to: Chief, Office of Natural Resource Restoration, P.O. Box 404, Station 5, 501 East State Street, Building 5, Trenton, New Jersey 08625-0404. A copy of the check, as

well as the notice, shall be sent to Joan Olawski-Stiener, Deputy Attorney General, Division of Law, Richard J. Hughes Justice Complex, P.O. Box 093, Trenton, New Jersey 08625-0093.

6. a. Within thirty (30) days of the effective date of this Consent Decree, the Settling Defendant shall pay \$1,262,199.05, plus Interest as provided in Paragraph 7, to DOI as monetary compensation for Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. The funds so paid shall be used in accordance with Section VIII (Restoration Plan and Anitra Oil Spill Restoration Account) of this Consent Decree. The Settling Defendant shall transfer these funds to the DOI NRDAR Fund Anitra Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the U.S. Treasury's Automated Clearing House (ACH)/Remittance Express program in accordance with instructions to be provided by DOI within 15 days of the date of the entry of the Consent Decree. The addenda record shall be annotated "Pay to DOI Account 14X5198, RE: Anitra Oil Spill Restoration" and shall list France Shipmanagement S.A. as the responsible party. Payment shall be deemed to have been made upon receipt of these funds by EFT. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent by the Settling Defendant to the persons listed in Section XIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 4449
1849 C Street, N.W.
Washington, D.C. 20240

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, Maryland 20910-3281

Chief
Office of Natural Resource Restoration
P.O. Box 404
Station 5
501 East State Street
Building 5
Trenton, New Jersey 08625-0404

Notices shall reference the DOJ Case Number (#90-5-1-1-4380), spill name, location, and name of paying responsible party.

b. Because the jurisdiction, trusteeships, and restoration goals of DOI, NOAA and the State for injured natural resources may overlap, monies paid pursuant to this paragraph shall be used, as agreed by DOI, NOAA and the State, in accordance with the Restoration Plan, and all such expenditures must be approved by the Trustees in accordance with the Memorandum of Agreement.

7. a. In addition to the payments to be made pursuant to Paragraphs 5 and 6, Settling Defendant shall pay Interest on the amounts due pursuant to those Paragraphs, as set forth herein. Interest shall be calculated as follows:

i. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, on or before June 30, 2004, and payment is timely, no Interest shall accrue;

ii. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, on or before June 30, 2004, but payment is not timely, Interest shall be calculated from the date 30 days after the effective date of this Consent Decree until the date of payment; and

iii. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, after June 30, 2004, Interest shall be calculated from June 16, 2004, until the date of payment. In each case, Interest shall accrue through the date of the Settling Defendant's payment.

b. Interest on any unpaid balance due under Paragraphs 5 and 6 shall be paid to the entity to which the unpaid amount is owed, in the manner set forth in those paragraphs.

c. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Consent Decree.

VII. Stipulated Penalties

8. a. The Settling Defendant shall pay a stipulated penalty to the United States and/or the State for failure to make a payment in Paragraph 5 at the rate of one thousand

dollars (\$1,000) per day, per violation, for each day of non-compliance. The stipulated penalty shall be paid to the United States and/or the State, as applicable, depending upon to which government the unsatisfied payment obligation was owed.

b. The Settling Defendant shall pay a stipulated penalty to the United States and the State for failure to make the payment in Paragraph 6 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. The stipulated penalty shall be paid 50% to the United States and 50% to the State.

9. a. Stipulated penalty payments to the United States shall be made by certified check payable to "Treasurer, United States of America" and shall be delivered by certified mail to the Office of the United States Attorney for the District of New Jersey. Stipulated penalty payments to the State shall be made in the same manner as set forth in Paragraph 5.c. and shall be credited to the appropriate State account as provided by law. Any stipulated penalty payments shall be accompanied by a reference to this Consent Decree, and be identified as "Stipulated Penalties." Notice of payment of a stipulated penalty shall be made to the Trustees in the manner specified in Section XIII (Notices).

b. Stipulated penalties shall begin to accrue on the day after payment is due and shall continue to accrue until payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

c. The United States or the State may give the Settling Defendant written notification that they have failed to make a payment as required by Paragraphs 5, 6.a., and 7. Such notice shall describe the noncompliance, and make a demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 8 regardless of whether the Settling Defendant has been notified of a violation. The Settling Defendant shall pay stipulated penalties within thirty (30) days of receipt of written demand for such penalties.

d. If the Settling Defendant fail to pay stipulated penalties when due, the United States and/or the State may institute proceedings to collect the penalties, as well as Interest as provided in Paragraph 9.e. below.

e. The Settling Defendant shall pay Interest on the unpaid balance of any stipulated penalties due, which shall begin to accrue on the date of demand made pursuant to Paragraph 9.c. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.a. shall be paid to the United States and/or the State, as applicable, depending upon which government the stipulated penalty was owed. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.b. shall be paid 50% to the United States and 50% to the State.

f. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

g. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based.

VIII. Restoration Plan
and
Anitra Oil Spill Restoration Account

10. The Trustees shall implement the Restoration Plan, as it may be amended or modified, and jointly approve expenditures from the Anitra Oil Spill Restoration Account pursuant to the terms of their Memorandum of Agreement. If the funds in the Anitra Oil Spill Restoration Account are not sufficient to complete the Restoration Plan, the Trustees shall not be required to expend additional funds to complete the Restoration Plan, nor shall the Settling Defendant be required to pay any additional funds above the amounts set forth in this Consent Decree.

11. All funds in the Anitra Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Anitra Oil Spill Restoration Account solely for use by the Trustees to plan, implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan. DOI shall, in accordance with law, manage and invest the funds in the Anitra Oil Spill Restoration Account. DOI has assigned the funds to be received into the Anitra Oil Spill Restoration Account a special project number, Project No.0350, to allow the funds to be maintained

as a segregated account within the DOI Natural Resource Damage Assessment and Restoration Fund. DOI shall not make any charge against the Anitra Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

IX. Covenant Not to Sue by Plaintiffs

12. In consideration of the payments that have been and will be made by the Settling Defendant under Section VI (Payment by Settling Defendants) of this Consent Decree, the United States covenants not to sue or take administrative action against the Settling Defendant pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for Natural Resource Damages related to the Anitra Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section VI (Payment to Trustees) and Section VII (Stipulated Penalties) of this Consent Decree.

13. In consideration of the payment that will be made by the Settling Defendant under Section VI (Payment to Trustees) of this Consent Decree, the State covenants not to sue the Settling Defendant pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), the New Jersey Spill Compensation and Control Act, 58:10-23.11, et seq., and/or the New Jersey Water Pollution Control Act, 58:10A-1, et seq., for Natural Resource Damages related to the Anitra Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section VI

(Payment to Trustees) and Section VII (Stipulated Penalties) of this Consent Decree.

14. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraphs 12 and 13 of this Section, including, but not limited to:

- a. claims against the Settling Defendant for its failure to meet a requirement of this Consent Decree;
- b. claims against the Settling Defendant for damages, including the costs of an assessment of damages, under OPA and any other applicable law, for injury to, destruction of, or loss of Natural Resources due to sources of contamination that do not arise from the Anitra Oil Spill;
- c. any criminal liability;
- d. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund in connection with the Anitra Oil Spill;
- e. claims, other than claims for Natural Resource Damages, against the Settling Defendant that the State or the United States, on behalf of the United States Environmental Protection Agency, may have under any applicable law.

X. Covenant by the Settling Defendant

15. The Settling Defendant hereby covenants not to sue and agrees not to assert

any claims or causes of action against the United States (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) or the State related to Natural Resource Damages arising from the Anitra Oil Spill, including, without limitation, any potential or pending claims against the Fund relating to the Anitra Oil Spill.

XI. Effect of Settlement

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Anitra Oil Spill against any person not a Party hereto.

17. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of costs, or other appropriate relief relating to the Anitra Oil Spill, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the

covenants not to sue set forth in Section IX (Covenant Not To Sue by Plaintiffs) or Section X (Covenant by Settling Defendant).

XII. Modification

18. a. Material Modifications. Material modifications to the Consent Decree may be made only by written approval of the Parties and the approval of the Court.

b. Non-Material Modifications. Non-material modifications of the Consent Decree may be made only by written approval of the Parties, and will become effective upon their filing with the Court.

c. Modifications to Memorandum of Agreement and/or Restoration Plan. Notwithstanding Paragraph 18.a.: 1) any modifications to the Memorandum of Agreement may be made only by written approval of the Trustees and in accordance with the terms of that agreement; and 2) any modifications to the Restoration Plan may be made only by written approval of the Trustees and in accordance with the requirements of OPA and any other applicable law. In addition, modifications to the Memorandum of Agreement and/or the Restoration Plan will become effective upon their filing with the Court.

d. Any modifications to the Memorandum of Agreement or Restoration Plan will not entitle the Trustees to seek any additional funds from the Settling Defendant.

XIII. Notices

19. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Sharon Shutler
NOAA GCNR
SSMC 3, 15th Floor
1315 East West Highway
Silver Spring, Maryland 20910

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458

As to the State:

Joan Olawski-Stiener
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 0093
Trenton, New Jersey 08625-0093

Marc A. Matsil
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental Protection
501 East State Street
P.O. Box 404
Trenton, New Jersey 08625-0404
F

As to France Shipmanagement S.A.:

Freehill, Hogan & Mahar, LLP
80 Pine Street
New York, New York 10005

XIV. Retention of Jurisdiction

20. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce this Consent Decree.

XV. Lodging and Opportunity for Public Comment

21. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), and 28 C.F.R. § 50.7. The United States, pursuant to 28 C.F.R. § 50.7, reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice.

22. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if the United States withdraws or withholds its consent pursuant to Paragraph 21, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. Final Judgment

23. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendant.

XVII. Actions of Trustees

24. All actions taken by the Trustees pursuant to this Consent Decree shall be in accordance with the terms of their Memorandum of Agreement, attached hereto at Appendix A.

XVIII. Appendices

25. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the Memorandum of Agreement into which the Trustees have entered.

Appendix B is the Draft Natural Resources Restoration Plan: Anitra Oil Spill. of May 1996.

XIX. Effective Date

26. The effective date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

XX. Costs and Attorneys Fees

27. a. If the Settling Defendant fails to make any payment required under

Section VI of this Consent Decree when due, including stipulated penalties, and the United States and/or the State file(s) with the Court either a motion to enforce this Consent Decree, a complaint, or any other application for such payment, and: (1) the United States and/or the State thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States and/or the State; or (3) the action is settled in a manner in which the United States and/or the State receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

b. The Trustees will use best efforts to coordinate among each other in any action to enforce this Consent Decree.

c. The Settling Defendant is entitled to assert any arguments or defenses, claims or counterclaims, available to them by law in an effort to mitigate such costs or fees.

XXI. Signatories/Service

28. The undersigned representative of the Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

29. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

30. The Settling Defendant shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____, 2004.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR THE UNITED STATES:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

BRIAN G. DONOHUE
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

CHRISTOPHER CHRISTIE
United States Attorney
District of New Jersey

MICHAEL CHAGARES
Assistant United States Attorney
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(201) 615-6500

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR THE STATE OF NEW JERSEY:

PETER C. HARVEY
Attorney General for New Jersey

DATE: 8/17/04

BY:

JOAN OLAWSKI-STIENER
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 0093
Trenton, New Jersey 08625-0093

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

DATE: 8/18/04

BY:

JOHN S. WATSON
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental
Protection
501 East State Street
P.O. Box 404
Trenton, New Jersey 08625-0404

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR FRANCE SHIPMANAGEMENT S.A.:

[Name] William L. Juska, Jr.
[Title] ATTORNEY-IN-FACT
[Address] Freehill, HOGAN & MATHAR LLP
80 Pine Street
New York, N.Y. 10005-1759

Agent authorized to accept service on behalf of France Shipmanagement S.A.:

NAME: FREEHILL, HOGAN & MATHAR LLP, ATTNY WILLIAM L. JUSKA, JR.
ADDRESS: 80 PINE STREET, NEW YORK, N.Y. 10005-1759
TELEPHONE NUMBER: